

Advocacy Paper on Separated Children

April 2011

Introduction

Historically, there has been a lack of child centred approach in dealing with separated children in Ireland, with too much emphasis placed on the immigration status of the child rather than the interests of the child.

This approach has impacted negatively on the quality of care given to separated children in the State.

Previously, hostels for separated children did not have round the clock trained childcare workers on site and were instead run by managers and security personnel. The HSE social work team provided social work services to separated children in these hostels on a Monday to Friday office hour basis, meaning that during the evenings and weekends, the young people had no access to care supports.

The lack of adequate round the clock care staff in the hostels and the absence of a proper inspection regime meant that, amongst other shortcomings, significant numbers of separated children went missing from care over the last few years and some still remain unaccounted for.

In 2009, the HSE started implementing its Equity of Care Policy which would ensure that separated children receive the same level of care as Irish children in care. After the closure of the privately run hostels, the four remaining residential units became operational in early February 2010. All were registered with the Social Services Inspectorate and subject to inspection.

The HSE also appointed Crosscare, the social care agency of the Catholic archdiocese of Dublin, to run the units and provide a 24 hour care service. These four units were registered with Health Information Quality Authority (HIQA) and were subject to inspection. Some separated children were and some still are housed in supported lodgings.

The HSE closed the remaining hostels by 31st December 2010 fulfilling a key target in the implementation of its equity of treatment and care process for all separated children in the State, including equal access to quality care placements and education services as outlined in the Ryan Implementation Plan.

Implementation of Equity of Care: Current Practice¹

Current practice is that the majority of separated children coming into the care of the state are now be placed in foster care after an initial assessment. The new process allows all newly-arrived children under-12 years to be placed on arrival in a foster care placement.

Newly-arrived separated children over 12 years are placed in one of the intake units for a maximum period of four weeks, where a preliminary needs assessment is carried out by a social worker in conjunction with qualified residential social care staff. Input from a psychologist is available if required. This assessment will inform the most appropriate care option, and determine if the child will need additional supports/links.

A placement of up to a month allows for exploration of the following options for the child:

- Possibility of family reunification;
- Possibility of return to country of origin;
- Medical screening and follow up medical care if necessary;
- Trafficking assessment and abuse disclosure;
- Psychology assessment and intervention if indicated;
- Social Care Worker assessment and care;
- Educational assessment;
- Age assessment;
- Obtain a Personal Public Service Number.
- Commence asylum application
- DNA testing for reunifications where doubt exists about authenticity of the relationship. Results will inform whether the child's placed with family or in care.

Within four to six weeks following arrival, separated children over 12 are transferred to a HSE Local Health Office (LHO) where an appropriate foster care placement is identified. This transfer takes place between the Principal Social Worker with the Separated Children Seeking Asylum team in Dublin and the Principal Social Worker in the receiving area.

The receiving LHO then assumes full responsibility for service provision to the child. Private foster agencies will provide foster placements and support the foster parents, including social work and social care support.

The HSE has contracted two private fostering agencies, Fostering First Ireland (FFI) and Five Rivers Ireland to provide fostering services for separated children. Both agencies have developed, in partnership with the HSE, a specialist fostering service for separated children seeking asylum.

Since separated children often arrive in Ireland having fled conflict, oppression, danger and abuse in their countries of origin, and often experienced arduous journeys, they are in need of foster carers who are equipped and supported to meet their emotional needs as well as their cultural and religious needs. Both agencies have stated that they actively recruit foster

¹ McHugh, D. *Updated Reports on the HSE Separated Children Seeking Asylum Service* (April and August, 2010)

carers who have the capacity and dedication to offer such care to these children. The foster placements include:

- A placement agreement
- An assessment of their needs, if requested by the HSE
- Support from a Link Social Worker
- Support from a Cultural Consultant
- Additional therapeutic, education, child care and respite support are available at an additional cost.

The agencies provide intensive support to all of its carers which include weekly support visits and access to 24 hour on-call services.

Challenges Arising from Implementation of Equity of Care: Separated Children in Foster Care

A number of foster care placements of separated children have broken down highlighting the dearth of appropriate foster placements and pointing to a difficulty in matching separated children with suitable carers².

It has been widely recognised in other jurisdictions, such as the United Kingdom, that the cultural and racial background of foster carers and the children placed in their care is a factor that can impact on the ability of social workers to make successful placements.

In the Irish context, the following concerns and challenges have been identified.

- The Irish Foster Care Association have stated in the past that foster parents frequently want to continue to support the children in their care once they have reached 18 but are prevented from doing so in many areas around the country by the patchy availability of aftercare support and services. This can cause huge upset to children and foster parents. It is extremely important that aftercare services be developed consistently across Ireland and should include separated children.
- The long time that some separated children spend waiting for a final decision on their asylum cases results in great uncertainty for the separated children and their foster families and has in many instances affected the child's mental well being and can cause distress for the child and the foster family;
- The lack of travel documents for separated children that would allow them to go on holidays with foster families or join their classmates on educational trips outside Ireland continues to be an ongoing problem which disrupts foster care placement. In the instances where the separated child cannot secure a travel document and therefore cannot travel with their foster family, he/she is sent to an HSE residential centre or supported lodgings until the family comes back from their holiday;
- Accessing language supports for separated children in the locations where they are being fostered becomes a significant challenge when they are placed with a family outside the main urban centres such as Dublin or Cork where these supports are predominantly available;
- The need for educational supports for separated children who have 'aged out' while in foster care, such as provision of access to further education for children who came into the system under the age of 18 and have completed the Leaving Certificate and want to proceed to third level education continues to be a significant challenge. While there are some supports in Dublin to assist aged out separated children access post secondary level education – mainly Post Leaving Certificate courses – this is not the case outside Dublin.

² Information provided by ASCI members and collated by Barnardos.

Action for Separated Children in Ireland³, of which Barnardos is a member, has recommended to the HSE that a review and progress update be carried out of the implementation of equity of care policy.

Recommendations

- There should be a legal framework for the provision of aftercare to separated children particularly where their status remains undecided for a long period. There should be some mechanism where a child who has been living in the State for several years or from a certain age is granted humanitarian leave to remain before or just after turning 18;
- Separated children who have aged out while still waiting for a final decision on their asylum claim should be assisted by the State in accessing further education especially considering that the majority of them would have gone through the Irish second level education system and completed the Leaving Certificate;
- Independent support (Refugee Legal Service, *Guardian ad Litem*) should be provided to separated children who are going through the asylum process and information and supports should be provided to foster parents to enable them to assist the child in preparing and presenting their asylum claim;
- Training and information should be provided to social workers and foster carers to enable them to adequately deal with on the specific issues facing separated children such as trafficking, language and cultural barriers, managing the uncertainty that is the result of going through the asylum and managing expectations. The training should also cover the children's health needs, managing culture shock especially for those separated children who are younger and newly arrived;
- Support should be provided to foster carers who independently want to continue to support the separated children in their care once they have reached 18. Currently such carers are largely prevented from doing so in many areas around the country by the patchy availability of aftercare support and services. It is extremely important that aftercare services be developed consistently across Ireland to support these foster carers and separated children.
- A temporary emergency travel document should be provided to separated children to allow them to travel outside and return easily to Ireland with their foster families for holidays or school trips. This has been brought up as an ongoing issue by foster carers, private foster care agencies and NGOs working with separated children.

³ Barnardos, Children's Rights Alliance, Irish Association for Young People in Care, Irish Refugee Council, Irish Society for the Prevention of Cruelty to Children and UNICEF Ireland.

Other Ongoing Areas of Concern

When the Immigration, Residency and Protection (IRP) Bill 2010 was introduced in July 2010, Barnardos expressed its concerns with regards to what we believed were some key omissions, particularly with regards to separated children and/or children who have been victims of trafficking.

With the Bill having seemingly stalled at Committee Stage in Dáil Éireann by the end of 2010, no progress had been made before the dissolution of the 30th Dáil, ahead of the general election in February 2011. In fact the new Minister for Justice, Alan Shatter TD stated that he said he would bring the IRP Bill back to the committee stage in the Dáil with some substantial amendments.⁴

It is also worth noting that in March 2011, the Committee on the Elimination of Racial Discrimination, in considering the third and fourth periodic reports on Ireland's implementation of the Convention on the Elimination of All Forms of Racial Discrimination expressed its concerns that existing and proposed legislation with regards to separated children did not provide adequate protection as required by the standards set by the Office of the United Nations High Commissioner for Refugees (UNHCR).

In this context, the Committee recommended that Ireland to enact legislation that would adequately protect the rights and welfare of separated children seeking asylum in line with the standards set by international law. The Committee also recommended that Ireland adopt immediate measures that would ensure that a *guardian ad litem* or advisor would be appointed for all separated and unaccompanied children irrespective of whether they have made a protection application or not.

Barnardos and its ASCI partners will continue to highlight the following key concerns that were expressed in its previous submissions to the 2008 and 2010 versions of the Bill.

These concerns are outlined below:

1 Best Interests of the Child

The principle of the best interests of the child as a primary consideration was glaringly missing in the 2010 IRP Bill. This omission contravened Ireland's international obligations under UN Convention on the Rights of the Child, whose Article 3 states that: ***In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.***

⁴ Case review for non-Irish parents of Irish citizens, The Irish Times - 22 March 2011

The UN Committee on the Rights of the Child, The Irish Human Rights Commission and the Ombudsman for Children and the UN High Commissioner for Refugees have all recommended that the principle of best interests of the child as a primary consideration should be incorporated into Irish legislation.

2 Entitlement to protection

There is still no clear entitlement to international protection for separated children in Ireland as set out in UNCRC Article 20: ***A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. States Parties shall in accordance with their national laws ensure alternative care for such a child.*** The IRP Bill 2010 did not include this clear entitlement.

3 Clear definition of separated children

The 2010 IRP Bill did not contain a clear definition of separated children. Any proposed legislation in this area should clearly define separated children as children who are under the age 18 and are outside their country of origin and separated from their parents or guardians.

4 Age Assessment

Barnardos strongly believes that it is not appropriate for immigration officers or members of An Garda Síochána to be solely responsible for assessing the age of a foreign national as had been proposed in the 2010 Bill.

Instead, legislation should clarify that when an individual's stated age is disputed, age should be assessed by an independent panel of experts including a social worker, a general practitioner and a psychologist, who have expertise in child and adolescent behaviour and development and who have been trained in child-friendly interview techniques.

The margin of error for each age assessment test should be considered and the individual should be given the benefit of the doubt in disputed cases. A guardian should be appointed before the testing and agree with the proposed process. When age is disputed, the individual concerned should be placed in special accommodation during the testing period and for the duration of any appeal process.

5 Family Reunification

The IRP Bill 2010 did not allow for a statutory provision for family reunification for foreign nationals with the exception of those who are granted refugee status or subsidiary protection. This makes Ireland the only EU member state not to have family reunification enshrined in primary legislation. As a result, confusion would remain over which members

can be admitted and Barnardos believes that siblings should be included as family members with whom legally resident children have a statutory entitlement to family reunification.

Reuniting separated children and those children who have been trafficked with their families is the preferred option if it is in the best interests of the child. For these children who are already traumatised, they often have coinciding and multiple psychological demands, including that they may not have lived with their family for years. It is essential that the family to whom the child is being sent are their actual relatives.

The placement of a child into a family that is not really their family could place this vulnerable child in a further precarious and threatening position. Therefore in the interests of protecting children all family reunification situations need to be recognised as potentially a child welfare and protection issue.

To summarise, any future legislation in this area should:

- Enshrine in legislation the principle of family reunification for all separated children where appropriate and in the best interests of the child;
- Ensure ongoing family support for children and families once reunification has occurred;
- Ensure sufficient background checks are carried out to guarantee that the family are actual relatives.

6 Guardian ad Litem

Barnardos has previously called for separated children seeking asylum to be treated in accordance with best international practice, including the provision of a designated social worker and Guardian-Ad-Litem (GAL). Under the provisions of the 2010 Bill, child victims of trafficking and child protection seekers could not make an application for recovery or protection residence permits in their own right.

Barnardos' submission was that if a GAL was allocated to all separated children and child victims of trafficking then their own voices would be heard in accordance with UNCRC Article 12.

7 Trafficked Separated Children

The inclusion of a section in the IRP Bill 2010 on the protection of suspected victims of trafficking was widely welcomed. Also welcomed was the proposed extension in the recovery and reflection period to 60 days, particularly the possibility of this period exceeding 60 days for foreign nationals under the age of 18 years⁵. However, this provision needed to be further developed to facilitate ratification of the Council of Europe Convention on Action against Trafficking in Human Beings and the UN Trafficking Protocol.

⁵ In light of the lack of progress with the Bill, the Department of Justice and Law Reform has stated that it is likely to introduce the proposed extension in the recovery and reflection period through administrative measures.

In particular, specific provisions relating to the protection of suspected trafficked children and the specific entitlements of those who are granted temporary residency should be added.

Furthermore, additional good practice measures should be seriously considered, such as a non-punishment clause and the possibility to grant temporary residency on humanitarian grounds (and in line with the child's best interests), whether or not the victim is in a position to co-operate with the authorities.

Another key challenge for authorities is identifying victims of trafficking – children may be travelling under false passports, they may be accompanied or claimed by people who say they are relatives and are taking responsibility for these children but who may not be authorized to take such responsibility. It is vital that the first responders i.e. authorities who the children are likely to meet first receive training in victim identification and that children entering the state are properly registered.

The Human Trafficking Act 2008, passed into law two years ago, makes it a criminal offence to engage in the trafficking of people for commercial gain. However, even though 66 victims of trafficking were identified in 2009 no convictions have yet been secured under the Act.

8 Missing Children in Care

Of the **513** children who have gone missing from State care between 2000 and 2010, **440** are still unaccounted for⁶. While it is likely that some of the missing minors may simply have reunited with family either in Ireland or elsewhere, some may have been trafficked into forced labour or prostitution.

Prior to the HSE's implementation of its Equity of Care policy, insufficient quality of care placement and supervision provided to unaccompanied minors had been cited as a reason for the high levels of disappearances, particularly the many cases where a minor was residing in a privately run, contracted hostel with no childcare professionals staffed on site outside business hours and during weekends.

An ESRI study in 2009 noted that traffickers were most likely aware of the locations of the separated children hostels and whether they were staffed appropriately by qualified childcare workers.

The early figures for 2011 show that no separated children have gone missing from care so far, something mainly attributed to the closure of the hostels.

9 Aftercare of Separated Children (Aged-out Minors)

The policy to disperse young people without any aftercare provision and general support continues to be of great concern. Aftercare should be established, for all children in care, as a statutory responsibility of the HSE.

⁶ Irish Times, 10th January, 2011

Current practice is that separated children who have turned 18 (usually referred to as aged-out minors) who are still awaiting an asylum or leave to remain application decision are transferred from the care of the HSE to the direct provision accommodation system for adult asylum seekers, administered by the Department of Justice's Reception and Integration Agency (RIA).

Such direct provision centres can be very unsuitable and may exacerbate the vulnerability of these young adults who may have been through long and traumatic journeys and/or have been in care for a long time. Prior to 2009, unaccompanied minors who turned 18 years were mainly sent to one of four dedicated accommodation centres in the Dublin area.

In early 2009, RIA started implementing a new policy of targeted dispersal of aged-out minors to direct provision centres in Cork, Limerick, Sligo and Galway. RIA stated that the centres were selected because they are family centres and are close to education facilities and other supports such as youth networks and also that some of the centres have public health nurses available on site.

Barnardos believes that regardless of where an aged-out minor is accommodated, there exists a lack of tracking or follow-up within the HSE, with a lack of resources available to social workers to follow up on cases and to provide information on their situation after they turn 18 years.

District Court Judge Conal Gibbons (2007) has noted that this lack of resources for follow up is a wider presenting issue, with minors in care moving from "one care area to another without proper reference onwards or communication to those who should be responsible."

Conclusion

While there have been some marked improvements in the care of separated children in Ireland since the start of the Ryan Implementation Plan, more action – especially of a legislative nature – is still required for this vulnerable group of children with diverse needs. This includes ensuring that appropriate supports are available to separated children and their carers as they move into foster care placements. Change to how separated children are perceived by the State is particularly needed and they must be provided access to supports that meet their needs as children first.

Transparency as to the progress made and the status of these children continues to be problematic, as does clarity around access to services and education for children placed in areas where the specific supports they need may not be available (i.e. language supports).

Supports for foster parents caring for separated children will also be required and provision or plans for such services are not yet finalised.

The Joint Protocol between An Garda Síochána and the HSE does not adequately address the specific issues of separated children who go missing, such as including a trafficking assessment in the risk assessment form. A six month review of the protocol was scheduled for the end of October 2009 and it is still not clear if it was undertaken and if a report is available.

It is especially important that the suspected victims of trafficking are identified and provided with timely and appropriate support.

The removal of children to Direct Provision centres once they turn 18 is also an ongoing area of concern as it is not based on an assessment of the needs of that young person.

In conclusion, since Ireland ratified the UN Convention on the Rights of the Child in 1992, the primary principles in the Convention should be incorporated in all Irish legislation as was recommended by the UN Committee on the Rights of the Child in 1998 and 2006. The primary principles include:

- An express recognition of the right of the child's voice to be heard in all matters affecting the child in accordance with age and maturity (UNCRC Article 12)
- The principle of non-discrimination – that the same level of protection and care be afforded equally to each child regardless of migration status (UNCRC Article 2)
- The principle of the best interests of the child should be seen as having paramount importance in all matters of welfare and protection of the child (UNCRC Article 3)
- The principle that each child should be entitled to support in order to achieve their developmental potential (UNCRC Article 6 as well as articles dealing with education, health and disability Articles 23, 24, 26, 27, 28, 31 and 39)
- The principle that separated children are entitled to special protection and assistance provided by the State (Art 20, UNCRC).

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